

1 SENATE BILL NO. 12

2 INTRODUCED BY J. MANGAN

3 BY REQUEST OF THE ECONOMIC AFFAIRS INTERIM COMMITTEE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING PORTIONS OF THE OCCUPATIONAL DISEASE ACT
6 TO COMPLY WITH DECISIONS BY THE MONTANA SUPREME COURT; CLARIFYING PAYMENT OF
7 ATTORNEY FEES, COMPROMISE SETTLEMENTS, AND LUMP-SUM PROVISIONS; AMENDING SECTIONS
8 39-72-402 AND 39-72-701, MCA; REPEALING SECTIONS 39-72-405, 39-72-703, 39-72-706, 39-72-707,
9 39-72-711, AND 39-72-712, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."
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11 WHEREAS, as part of the 1987 overhaul of the Workers' Compensation Act, the Montana Legislature
12 specified its governmental interest by adopting a declaration of public policy, codified at section 39-71-105, MCA,
13 which declared that for purposes of interpreting and applying both the Workers' Compensation Act and the
14 Occupational Disease Act of Montana, the objective of the Montana workers' compensation system was to
15 provide, without regard to fault, wage supplement and medical benefits to a worker suffering from a work-related
16 injury or disease, that wage-loss benefits should bear a reasonable relationship to actual wages lost as a result
17 of a work-related injury or disease, and that the objective of the workers' compensation system was to return
18 a worker to work as soon as possible after a work-related injury or disease; and

19 WHEREAS, in addition to adopting a declaration of public policy, the 1987 Legislature also substantially
20 revised the definitions of "injury" and "occupational disease" by creating two classes of workers whose afflictions
21 were classified as either "injuries" or "occupational diseases" based solely upon the number of work shifts over
22 which the afflictions occurred; and

23 WHEREAS, after the 1987 revision, the Montana Supreme Court began considering challenges from
24 claimants alleging that the disparate legislative treatment of those workers with "injuries" and those workers with
25 "occupational diseases" violated the equal protection guarantee of Article II, section 4, of the Montana
26 Constitution, which requires that all persons be treated alike under like circumstances; and

27 WHEREAS, in 1999, the Montana Supreme Court held in *Henry v. State Compensation Insurance Fund*,
28 1999 MT 126, 294 Mont. 449, 982 P.2d 456 (1999), that the elimination of workers suffering from occupational
29 diseases from access to rehabilitation benefits that are available to injured workers violated the equal protection
30 guarantee because it bore no rational relationship to the state's declared policy of returning workers to work as

1 soon as possible; and

2 WHEREAS, in 2003, the Montana Supreme Court held in *Stavenjord v. Montana State Fund*, 2003 MT
3 67, 314 Mont. 466, 67 P.3d 229 (2003), that the disparate treatment of disabled workers based simply on the
4 length of time over which the workers' injury or disease is sustained violated the equal protection guarantee
5 because it was not rationally related to the Legislature's declared policy of providing a wage loss benefit that
6 bears a reasonable relationship to the workers' actual wage loss; and

7 WHEREAS, based on its *Stavenjord* decision, the Montana Supreme Court in *Schmill v. Liberty*
8 *Northwest Insurance Corp.*, 2003 MT 80, 315 Mont. 51, 67 P.3d 290 (2003), held that apportioning or reducing
9 a worker's permanent impairment award for the worker's occupational disease while providing full benefits for
10 a similarly injured worker under the Workers' Compensation Act violated the equal protection guarantee because
11 it was not rationally related to the Legislature's declared policy that compensation was intended only for
12 work-related injury or disease; and

13 WHEREAS, because the Montana Supreme Court has ruled that workers suffering a work-related injury
14 on one shift and workers suffering a work-related injury on more than one shift are similarly situated for purposes
15 of equal protection and because the Legislature has shown no rational reason to treat these workers differently,
16 it is necessary that the Legislature, at a minimum, address the equal protection problems identified by the
17 Montana Supreme Court in the *Henry*, *Stavenjord*, and *Schmill* decisions.

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19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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21 **Section 1.** Section 39-72-402, MCA, is amended to read:

22 **"39-72-402. Practice and procedure -- applicability of Workers' Compensation Act.** (1) Except as
23 otherwise provided in this chapter, the practice and procedure prescribed in the Workers' Compensation Act
24 ~~applies~~ apply to all proceedings under this chapter.

25 (2) Sections 39-71-304, 39-71-403, 39-71-406, 39-71-409, 39-71-411 through 39-71-413, 39-71-611
26 through 39-71-614, 39-71-741, 39-71-742, and Title 39, chapter 71, part 9, which are contained in the Workers'
27 Compensation Act, specifically apply to and are incorporated as part of this chapter."

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29 **Section 2.** Section 39-72-701, MCA, is amended to read:

30 **"39-72-701. Compensation for total disability, temporary or permanent partial disability,**

vocational rehabilitation, or death due to because of occupational disease other than pneumoconiosis.

(1) ~~The compensation to which an that is payable to an employee with an occupational disease must be paid in the same amount and for the same time period under this chapter:~~

(a) to an injured employee who is:

(i) temporarily totally disabled or permanently totally disabled;

(ii) temporarily or permanently partially disabled; or

(iii) eligible for rehabilitation benefits by because of an occupational disease other than pneumoconiosis;

or

(b) to the beneficiaries and dependents of the employee in the case of death caused by an occupational disease other than pneumoconiosis, ~~are entitled under this chapter shall be the same payments which are payable to an injured employee, and such payments shall be made for the same period of time as is provided in cases of temporary total disability, permanent total disability, and in cases of injuries causing death under the Workers' Compensation Act.~~

(2) ~~In cases where in which~~ it is determined that periodic disability benefits granted by the Social Security Act are payable because of the disease for which temporary total and permanent total disability benefits are payable, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal as nearly as practical to one-half the federal periodic benefits for ~~such that week,~~ which ~~The amount is to~~ must be calculated from the date of the disability social security entitlement."

NEW SECTION. **Section 3. Repealer.** Sections 39-72-405, 39-72-703, 39-72-706, 39-72-707, 39-72-711, and 39-72-712, MCA, are repealed.

NEW SECTION. **Section 4. Effective date -- applicability.** [This act] is effective July 1, 2005, and applies to occupational diseases that occur on or after July 1, 2005.

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